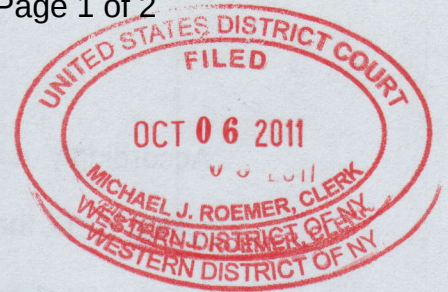


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



TIMOTHY P. WILLIAMS JR. and TINA WILLIAMS,

Appellants,

-vs-

MEMORANDUM and ORDER

ESL FEDERAL CREDIT UNION and GEORGE M.
REIBER, Chapter 13 Trustee,

11-CV-6491 - CJS

Appellees.

APPEARANCE

For Plaintiffs:

David D. MacKnight, Esq.
Lacy Katzen LLP
30 East Main St
P.O. Box 22878
Rochester, NY 14692-2878

Siragusa, J. This matter is before the Court on Appellees' motion to dismiss the appeal begun in the Bankruptcy Court on Case No. 11-21242, a Chapter 13 Bankruptcy. Appellees have shown that Appellants filed a Bankruptcy Appeal Statement of Issues on August 31, 2011, in the Bankruptcy Court. (Appellees' Mot. Ex. C.) Bankruptcy Rule 8007(c) provides as follows: "If prior to the time the record is transmitted a party moves in the district court ... for dismissal ..., the clerk at the request of any party to the appeal shall transmit to the clerk of the district court ... a copy of the parts of the record as any party to the appeal shall designate." Arguably, the Bankruptcy Appeal Statement of Issues could be seen as a notice of appeal, thereby divesting the Bankruptcy Court of jurisdiction. *In re Overmyer*, 136 B.R. 374, 376 (Bkrtcy. S.D.N.Y. 1992). If that is the case, then the district court is the only one with jurisdiction to address Appellees' motion to dismiss the appeal.

Accordingly, it is hereby

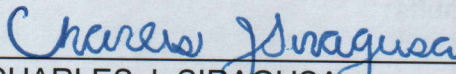
ORDERED, that the Clerk of the Bankruptcy Court transmit to the Clerk of this Court a copy of the Bankruptcy Appeal Statement of Issues and a copy of the Docket in the Bankruptcy Court such that the Clerk of the District Court can open an appeal docket; and it is further

ORDERED, that the Clerk of the District Court open an appeal docket and docket the motion by Appellees to dismiss the allegedly unperfected appeal.

So Ordered.

Dated: October 6, 2011
Rochester, New York

ENTER:


CHARLES J. SIRAGUSA
United States District Judge